

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 JUSE-00 L-03 AID-05 CEA-01 CIAE-00

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PASS: L FOR FELDMAN, EB FOR BOEKER, TREASURY FOR WIDMAN,
JUSTICE FOR DAVIDOW

E.O.11652: N/A

TAGS: EFIN, EINV, OECD

SUBJECT: AD HOC WORKING GROUP TO DRAFT PRINCIPLES OF
BEHAVIOR FOR MNE'S, MEETING JUNE 10-11, 1975

REFS: (A) IME/WP/75.1

(B) IME/75.4

1. SUMMARY. DRAFTING GROUP MET ON JUNE 10 AND 11. IT
DISCUSSED FOUR MAIN ASPECTS OF DRAFT PRINCIPLES ON
MNE'S: (1) HOW THE MNE CONCEPT SHOULD BE REFLECTED IN
THE PRINCIPLES; (2) HOW TO DEAL WITH THE QUESTION OF
RESPONSIBILITIES OF GOVERNMENTS (I.E. EXPLICITLY OR
IMPLICITLY); (3) WHAT SUBSTANTIVE AREAS WERE TO BE
COVERED IN THE CODE (I.E. WHICH SPECIALIZED GROUPS WERE
TO CONTINUE THEIR WORK IN THE VARIOUS FIELDS, AND TO
WHAT ENDS); (4) FURTHER CLARIFICATION AS TO THE ISSUES
OF DISCLOSURE OF INFORMATION, AND EMPLOYMENT AND
INDUSTRIAL RELATIONS. THE GROUP MADE SOME PROGRESS IN
CLARIFYING AGREEMENT OR NARROWING ISSUES IN EACH OF
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THESE AREAS, WHICH WILL BE REFLECTED IN A NEW REPORT TO

BE PUT FORWARD BY SECRETARIAT TO IME. TIME OF NEXT MEETING OF DRAFTING GROUP HAS YET TO BE DETERMINED. END SUMMARY.

2. WORKING GROUP BEGAN WITH A DISCUSSION OF THE MNE CONCEPT, AND HOW THAT CONCEPT COULD BE REFLECTED IN THE INSTRUMENT WHICH MAY RESULT FROM THE OECD EXERCISE. QUESTIONS WERE RAISED AS TO (A) THE PROBLEM OF THE "ADDRESSEE" OF THE PRINCIPLES (CENTRAL UNITS AND/OR SUBSIDIARIES); (B) NON-DISCRIMINATION (BETWEEN MNE'S AND NATIONAL FIRMS), AND (C) THE DEFINITION OF MNE'S. ATTENTION IN THIS DISCUSSION WAS FOCUSED ON PARTS (F) AND (G) OF THE PREAMBLE, AND ON PARA 14 (INTRODUCTORY STATEMENT) AS FOUND IN REFDOK (A). U.S. DELEGATE INDICATED THAT MNE'S WERE NOT MONOLITHIC AND THAT IN PRACTICE THERE WAS A WIDE RANGE OF FORMS OF ORGANIZATION (FROM CENTRALIZED TO WHOLLY DECENTRALIZED) VARYING FROM MNE TO MNE. HE ARGUED FOR A FLEXIBLE FORMULA WHICH TOOK THIS DIVERSITY INTO ACCOUNT. U.S. DELEGATE CONTINUED TO ARGUE AGAINST DEFINING MNE'S AND FOR A BROAD CONCEPT OF THE MNE. U.S. DELEGATE EMPHASIZED THE NEED, WHEN APPROPRIATE, TO APPLY THE MNE PRINCIPLES TO NATIONAL ENTERPRISES AND NON-MNE FOREIGN INVESTORS AS WELL ON A NON-DISCRIMINATORY BASIS. HE EXPRESSED CONTINUED CONCERN THAT THE OECD EFFORT MIGHT RESULT IN THE MNE'S HAVING SEPARATE TREATMENT FROM OTHER ENTERPRISES UNDER INTERNATIONAL LAW, A POSITION UNACCEPTABLE TO THE U.S.

3. U.K. AND GERMANY GAVE PARTIAL SUPPORT TO THESE U.S. VIEWS, ESPECIALLY ACKNOWLEDGING THE DIVERSITY OF MNE STRUCTURES AND CIRCUMSTANCES. JAPAN AGREED TO A BROAD DEFINITION OF MNE'S, WHILE SWEDEN INDICATED A PREFERENCE FOR THE SECRETARIAT DRAFTS OF (F) AND (G) AND PARA. 14 OF REFDOK (A). IN CONCLUDING THIS ITEM, TWO ALTERNATIVES WERE SUGGESTED FOR THE INTRODUCTORY STATEMENT:

BEGIN TEXT

ALTERNATIVE A
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FOR THE PURPOSE OF THESE GUIDELINES, A MULTINATIONAL ENTERPRISE IS RECOGNISED AS ONE WHICH COMPRISES COMPANIES, BRANCHES OR OTHER SIGNIFICANT COMPONENT PARTS IN MORE THAN ONE COUNTRY, EACH FALLING UNDER THE JURISDICTION OF ITS COUNTRY OF ESTABLISHMENT, WITH THE CAPACITY OF SHARING KNOWLEDGE AND RESOURCES BETWEEN THE COMPONENT PARTS AND POSSESSING ONE OR MORE UNITS OF

SPECIAL AUTHORITY WITHIN ITS ORGANISATION ABLE TO EXERCISE A SIGNIFICANT INFLUENCE ON THE ACTIVITIES OF THE COMPONENT PARTS. THE PRINCIPLES SET OUT BELOW ARE ADDRESSED EITHER TO THE UNITS WITH SPECIAL AUTHORITY OR TO THE OTHER COMPONENT PARTS OF THE ENTERPRISE ACCORDING TO THE DIVISION OF RESPONSIBILITIES BETWEEN THEM (HAVING

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REGARD TO THE DIVERSITY OF ORGANISATIONAL AND MANAGEMENT STRUCTURES WHICH MAY EXIST IN SUCH ENTERPRISES).

UNITS HAVING THE SPECIAL AUTHORITY DESCRIBED ABOVE SHOULD CO-OPERATE WITH OTHER PARTS OF THE ENTERPRISE TO FACILITATE COMPLIANCE WITH THE PRINCIPLES OF CONDUCT SET OUT BELOW, AND SHOULD PROVIDE ALL SUCH REASONABLE ASSISTANCE AS MAY BE REQUESTED OF THEM FOR THIS PURPOSE.

ALTERNATIVE B

WHILE A MULTINATIONAL ENTERPRISE NORMALLY IS THOUGHT OF AS CONSISTING OF COMPANIES, BRANCHES OR OTHER

SIGNIFICANT UNITS IN MORE THAN ONE COUNTRY WHICH ARE SO LINKED THAT ONE OR MORE OF THE UNITS MAY BE ABLE TO EXERCISE A SIGNIFICANT INFLUENCE ON THE ACTIVITIES OF THE OTHER UNITS, MULTINATIONAL ENTERPRISES ARE QUITE DIVERSE IN THE METHODS BY, AND THE EXTENT TO, WHICH THEY CO-ORDINATE THEIR ACTIVITIES. ACCORDINGLY, THE PRINCIPLES STATED HEREIN ARE ADDRESSED TO THE PERTINENT UNITS OR AUTHORITIES WITHIN THE ENTERPRISE ACCORDING TO THEIR LIMITED OFFICIAL USE

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ACTUAL RESPONSIBILITIES.

IN MANY CASES THE PRINCIPLES STATED HEREIN WILL REPRESENT GOOD PRACTICE FOR FOREIGN AND DOMESTIC ENTERPRISES GENERALLY. IN SUCH CIRCUMSTANCES, THESE PRINCIPLES SHOULD PROVIDE A BASIS OF EXPECTATION AS TO THE BEHAVIOUR OF ALL ENTERPRISES.

END TEXT

SECRETARIAT INDICATED IT WOULD TRY TO SEE IF IT COULD WORK OUT A COMPROMISE TEXT, REFLECTING BOTH ALTERNATIVES WHICH, EFFECTIVELY, ARE NOT DISSIMILAR. SECRETARIAT INDICATED THAT PERHAPS THE SECOND PARAGRAPH OF ALTERNATIVE A MIGHT BE SUPERFLUOUS AND MIGHT BE DROPPED IN AN EFFORT TO ACHIEVE A COMPROMISE DRAFT.

4. STATEMENT OF GOVERNMENT RESPONSIBILITIES IN PARA. 12 OF REFD0C (A), PARTICULARLY THE "DECLARATION" AT THE END OF THAT SECTION, WAS DISCUSSED. SOME MEMBERS OF GROUP WERE NOT SURE THAT THE THOUGHTS RE GOVERNMENT RESPONSIBILITY AND RESPECT FOR INTERNATIONAL LAW EXPRESSED IN THIS SECTION SHOULD BE SEPARATE FROM PREAMBLE. U.S. DELEGATE EMPHASIZED NEED FOR A CLEAR INDICATION OF CONCOMITANT GOVERNMENT (AS WELL AS MNE) RESPONSIBILITIES, AND FOR RESPECT FOR INTERNATIONAL LAW. U.S., U.K., AND FRG INDICATED A WILLINGNESS TO MAINTAIN THE DISTINCTION OF THE THOUGHTS PRESENTED IN THE "DECLARATION" FROM BOTH THE PREAMBLE AND BASIC TEXT OF THE PRINCIPLES. HOWEVER, THESE DELEGATIONS FELT THAT SOME OTHER WORDING MIGHT BE APPROPRIATE, RATHER THAN THE USE OF "DECLARE," (I.E. PERHAPS USING "AGREE" OR SIMILAR LANGUAGE). SECRETARIAT INDICATED IT WOULD LOOK INTO THIS MATTER AND REFLECT THE THOUGHTS OF THE GROUP IN FURTHER DRAFTS OF THE PRINCIPLES.

5. GROUP MADE GOOD PROGRESS REGARDING DISCLOSURE OF INFORMATION TO THE PUBLIC (PARAS. 24 AND 25, REFD0C (A)). MOST DELEGATIONS SHARED A PREFERENCE FOR ALTERNATIVE B, WITH THE U.S. DELEGATE ALSO INDICATING A WILLING-

NESS TO UTILIZE ALTERNATIVE B AS A BASIS OF DISCUSSION.
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LITTLE SUPPORT WAS FOUND FOR ALTERNATIVE A. U.K., WHICH HAD INITIALLY PROPOSED ALTERNATIVE B IN EARLIER MEETING OF GROUP, MADE FOLLOWING CHANGES, WHICH WERE GENERALLY SUPPORTED BY REST OF GROUP. THE U.K. WISHED, IN ALTERNATIVE B, TO OMIT REFERENCE TO FIXED ASSETS, INVENTORY AND INVENTORY CHANGES DURING YEAR, INTER-GROUP TRANSACTIONS, AND A BREAKDOWN OF RESEARCH AND DEVELOPMENT EXPENDITURE. THE U.K. WISHED TO ADD REFERENCES TO SOURCES AND USES OF FUNDS, TOTAL EMPLOYEE REMUNERATION, AND INTRA-GROUP LOANS (TO FINAL SUBPARAGRAPH OF ALTERNATIVE B). THERE WAS AGREEMENT BY MOST DELEGATES THAT THE AMOUNT OF DATA REQUIRED AND RESULTING WAS EXCESSIVE AND WOULD NOT BE UNDERSTANDABLE TO THE PUBLIC AT LARGE, EVEN IF IT WAS ACCESSIBLE. SWEDEN REMAINED ADAMANT IN ITS PREFERENCE FOR AS MUCH DETAILED DATA AS POSSIBLE. U.S. DELEGATE REAFFIRMED DOUBTS AS TO THE MEANINGFULNESS OF A COUNTRY BREAKDOWN ON MNE DATA, GIVEN ALL THE IMPLICATIONS AND MISIMPLICATIONS WHICH COULD STEM FROM SUCH DISCLOSURE. HE INDICATED EQUAL CONCERN FOR DISCLOSURE REGARDING EMPLOYEES AND TOTAL REMUNERATION. SECRETARIAT INDICATED IT WOULD USE ALTERNATIVE B AS A BASIS FOR FURTHER DRAFTS OF THIS SECTION.

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6. SOMEWHAT LESS PROGRESS WAS MADE ON SECTION ON DIS-
CLOSURE OF INFORMATION TO GOVERNMENTS (PARAS. 26, 27,
28 OF REFD0C (A)). THE U.S., EC, FRG, JAPAN, AND U.K.
ALL PREFERRED ALTERNATIVE A (BASICALLY A U.S. DRAFT),
WITH SWEDEN AND NETHERLANDS PREFERRING ALTERNATIVE B.
U.S. DELEGATE EMPHASIZED THE NEED TO MAINTAIN AN ACCEP-
TABLE STANDARD OF BUSINESS CONFIDENTIALITY.

7. IN A TOUR D'HORIZON, THE GROUP DISCUSSED THE EIGHT
SUB-PARAGRAPHS ON EMPLOYMENT AND INDUSTRIAL RELATIONS
FOUND IN PARA. 35 OF REFD0C (A). THE GROUP FOUND ITSELF
FAR APART ON MOST OF THE SENSITIVE ISSUES IN THIS SEC-
TION, PARTICULARLY SUBPARAGRAPHS 4 AND 8 (DEALING WITH
TRANSFER OF OPERATIONS AND EMPLOYEE PARTICIPATION).
LITTLE MOVEMENT WAS MADE IN THIS AREA IN A DIRECTION
THAT WOULD HAVE ENABLED THE SECRETARIAT TO PRODUCE A
MORE CONSOLIDATED TEXT.

8. IN SUMMING UP, THE SECRETARIAT INDICATED IT WOULD
PUT FORWARD A PAPER ON THE FOUR BASIC AREAS WHICH WERE
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DISCUSSED IN THE DRAFTING GROUP, WITHOUT TAKING A SPECI-
FIC POSITION ON ANY OF THESE SUBJECTS, BUT RATHER
PRESENTING, AS APPROPRIATE, THE VARIOUS ALTERNATIVES AS
THEY WERE PRESENTED. THE SECRETARIAT SAID IT WOULD
LEAVE OPEN THE POSSIBILITY OF HAVING ANOTHER MEETING OF
THE DRAFTING GROUP, EITHER AT THE TIME OF THE NEXT TIME
(JULY 8 AND 9) OR SOMEWHAT LATER.
TURNER

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